

ORIGINAL

Before the  
Federal Communications Commission  
Washington, D.C. 20554

RECEIVED

DEC 1 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Inquiry Concerning High-Speed )  
Access to the Internet over )  
Cable and Other Facilities )

GEN Docket No. 00-185 /

**COMMENTS OF  
MILLENNIUM DIGITAL MEDIA, INC.**

Millennium Digital Media, Inc. ("Millennium") welcomes the opportunity to provide comments in response to the Commission's Notice of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities.<sup>1</sup> Millennium Digital Media was created in 1997 to develop and operate cable systems and ISP companies with a strategy of becoming a superior provider of high quality entertainment video and high-speed data services.

Millennium's cable affiliate, Millennium Digital Media Systems ("Millennium Systems"), while currently ranked as the twentieth largest multi-system operator in America, has fewer than 142,000 cable franchised subscribers scattered among three regions: the Mid-Atlantic (Maryland), the Central (Michigan) and the Northwest (Washington). Millennium Systems serves both metropolitan and small rural communities. Millennium Systems has spent millions of dollars in each of the three regions acquiring and upgrading its cable systems to provide digital cable and high-speed data services. Millennium currently offers high-speed cable modem access in all three

<sup>1</sup> In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities, Notice of Inquiry, Gen. Docket No. 00-185 (Released September 28, 2000). ("NOP")

No. of Copies rec'd  
List A B C D E

0 + 4

regions. In certain areas served by Millennium Systems, it competes directly against other cable service providers.

Since July 1999, Millennium's affiliate, MDM iNet, has grown, primarily through acquisitions of small regional ISPs, to become one of the 30<sup>th</sup> largest Internet Service Providers (ISPs) in the country.

In reviewing the various pleadings which will undoubtedly be filed in this matter it is important for the Commission to remember that this inquiry is not just about AT&T, Time-Warner, America Online, Microsoft, the Regional Bells and other large companies. Rather, there are small cable operators, such as Millennium, with interests at stake in this matter. As a small privately-held company with both cable operations and regional internet service provider operations this inquiry hits directly at the heart of Millennium's business, especially in light of the competitive environments in which Millennium operates. As the Commission notes, any action arising out of the NOI will have a direct effect on the ability of companies to compete, to raise necessary capital and to further deploy the upgrades necessary to provide high-speed data. Millennium believes that the best action the Commission can take in this Inquiry is no action. The Commission should continue its hands-off regulatory approach and allow market forces to continue to drive innovation, deployment of new technology and effective competition.

#### **I. The Commission Should Not Regulate Access to the Internet.**

A primary key to the success of the Internet has been the Commission's decision to exercise regulatory restraint and rely on market forces and competition to drive innovation and deployment of new technology. Congress itself recognized over 4 years ago that the "Internet and other interactive computer services have flourished, to the

benefit of all Americans, with a minimum of government regulation”.<sup>2</sup> By choosing restraint, the Commission is achieving its statutory directive to “promote widespread and rapid deployment of high speed services, while at the same time preserve and promote the ‘vibrant and competitive free market’ that exists for the Internet”.<sup>3</sup>

The Commission’s recently released report on “High-Speed Services for Internet Access” demonstrates the continued success enjoyed by allowing market forces and free competition drive the deployment of high-speed internet access.<sup>4</sup> The Report indicates that subscribership to high-speed access to the Internet service increased by 57% during the first half of 2000. The presence of high-speed service subscribers was reported in all fifty states and in about 70% of the zip codes. The Report notes that at mid-year 2000 there were a total of 4.3 million high- speed service lines (or wireless channels) and approximately 3.1 million residential and small business subscribers to high-speed services.

The continued increases in subscribership to high-speed access services demonstrates that the Commission’s non-intrusive approach to regulating access to the Internet is working. The Commission should not now suddenly reverse course and begin selective regulation based on technology, especially when, to the customer sitting at the computer, its is not so much how the service is delivered but rather the quality and value of the service delivered. As the Commission notes, “cable modem service is among several different means by which consumers may obtain high-speed access to the

---

<sup>2</sup> 47 USC 230(a)(4)

<sup>3</sup> NOI, para. 2.

<sup>4</sup> High-Speed Services for Internet Access: Subscribership as of June 30, 2000, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission (Released October 2000).

Internet”.<sup>5</sup> There is no reason to single cable modem access out from other means of access and there is no reason to begin regulating access to the Internet. The Commission previously stated that it would revisit its “hands-off” policy if “competition fails to grow as expected”.<sup>6</sup> Competition has flourished and there is no need to revisit the policy.

## **II. There is No Need to Attempt to Pigeon Hole Cable Modem Service into A Regulatory Classification.**

The NOI seeks comment on the variety of legal or policy frameworks that might apply to cable modem service and the cable modem platform. The NOI seeks comment on whether cable modem service should be deemed 1) a cable service, 2) a telecommunications facility, 3) a telecommunications service, thus imposing obligations as either a telecommunications carrier or common carrier or both, 4) an information service or, 5) some other type of service requiring a new legal and policy framework.<sup>7</sup> The question assumes that there is a need to pigeonhole cable modem service into a specific regulatory category and thus regulate Internet access. As explained above such is not the case—the Commission should continue its “hands-off” approach to Internet access.

Adding burdensome regulation to cable modem access service offerings will hurt the ability of small cable providers to raise capital and upgrade facilities to be viable competitors. Imposing regulatory regimes such as common carrier obligations on cable providers merely because they decide to provide Internet access will disincent providers, including small providers such as Millennium, from offering high-speed access and other advanced services. The fact that telecommunications carriers and wireless providers may

---

<sup>5</sup> NOI, para. 5.

<sup>6</sup> NOI, para. 4.

<sup>7</sup> NOI, paras. 15-24.

offer Internet access does not make a cable provider offering such access a telecommunications carrier anymore than it makes it a wireless carrier.

In promulgating regulations, especially for new technologies, the focus should be more on whether there is a need for such regulation and less on what existing category the offering can be pigeonholed into for regulatory purposes. The initial question should be what is the underlying concern that requires government involvement and classification. It is better to merely deal with the concern rather than making broad determinations that the service transforms the entity into a classification that brings with it all the accompanying regulation. In the past Congress and this Commission have decided that there is not a need for regulatory intervention in the area of access to the Internet—such should continue to be the policy.

### **III. The Commission Should Continue to Allow Market Forces to Determine Arrangements Between Cable Operators and ISPs.**

The NOI requests comments on determining the appropriate level of regulatory involvement regarding ISP access to cable modem customers. It is important to keep in mind that the issue is not the ability of a cable modem customer to reach a specific ISP or location on the Internet—rather the issue is whether the Commission should force a business relationship between the cable operator and an ISP. The answer is no.

Again, the Commission needs to keep in mind that it is not promulgating rules just for the AT&T Broadband/Excite@Home type scenario but is considering mandates that will affect all cable operators and their decision to deploy high-speed services. Many small cable operators, such as Millennium, do not have ownership interests in any Internet content or programming provider and therefore are not inclined to direct customers to any particular content provider. It is fundamentally unfair to saddle cable

operators, especially small operators such as Millennium, with regulation merely to benefit large content based ISPs, many of whom have greater resources than the small cable providers.

The public is better served by allowing business relationships to develop through normal means rather than regulatory mandates. As both an ISP and cable provider Millennium firmly believes that the Commission should continue to allow business relationships between ISPs and cable operators to develop based on natural business factors such as economics, quality of service and competition.

Cable modem service is basically an ancillary service for the operator and allows it to help justify its system upgrade to provide digital cable and other new services. The ability to deploy such upgrades are especially important in competitive cable markets where the new entrant is deploying state of the art networks. Cable operators, especially small operators, should have the ability to team with the ISP or ISPs of their choice for primary Internet service over the cable modem and use such partnership in determining the basic business model for deploying the service and raising capital for the upgrades. A cable operator needs a quality ISP with proven customer service capabilities to make the cable modem service a viable competitive offering against other high-speed access providers. The consuming public is going to judge the cable operator and its cable modem service based on the quality of service provided by the ISP or ISPs. If the service is not on a par with what is available from other high-speed access providers the public is going to go elsewhere. If the customers are demanding access to a particular ISP or a choice of ISPs then the cable provider is going to need to either find a means to satisfy

such demands or lose customers. The business relationships should be driven by market demand—not regulatory mandates.

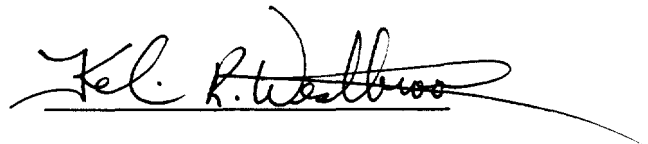
The Commission questions whether “open access” to the cable modem is a desirable public policy goal and if so whether market forces are sufficient to achieve such goal. Millennium believes that the second question answers the first. Market forces will determine whether “open access” is something that the public truly demands and is willing to pay for. Given the number of alternatives for Internet service access available to customers, cable operators will need to either meet public demand or be left behind. Likewise, if access to multiple providers is something that the public demands from a high speed Internet access provider then cable operators will need to meet such demand to compete and remain viable. Commission intervention is not required.

### **Conclusion**

For the reasons stated herein Millennium believes that the Commission should continue its hands-off approach and allow market forces, not regulatory intervention, to continue to direct the success of the Internet.

Respectfully Submitted,

Millennium Digital Media Inc.

A handwritten signature in black ink, appearing to read "Kel. R. Westbrook", is written over a horizontal line.

Kelvin R. Westbrook  
President

Bruce Beard  
Senior Counsel

120 S. Central-Suite 150  
St. Louis, MO.  
63105  
314-802-2400